IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

DIST.: NASHIK

PUBLIC INTEREST LITIGATION NO. 89 OF 2004

Balu Dada Gabhale,]
Age: Adult, Occ.: Social Service,]
Residing at: Govardhan]
Post: Y.B. Chavan Open University,]
NASHIK.] …Petitioner

Versus

1. Zilla Parishad, Nashik,]
Through the Chief Executive Officer,]
situated at Nashik.]

2. The State of Maharashtra,]
Through the Secretary,]
Village Development Department,]
Mantralaya, Mumbai 400 032]

3. Gramin Mahila Griha Udyog,]
Aurangabad, through its Proprietor,]
having office at Aurangabad.]

4. Tahsildar, Igatpuri,]
having office at Igatpuri, Dist. Nashik.]

5. Tahsildar, Dindori, having office]
at Dindori, Dist. Nashik.] …Respondents

Mr. N.R. Bubna for the Petitioner
Mr. C.R. Sonawane, Assistant Government Pleader,
for Respondent No. 2.

CORAM: SWATANTER KUMAR, C.J., &
S.C. DHARMADHIKARI, J.

JUDGMENT RESERVED ON: APRIL 4, 2007
DATE OF DECISION: APRIL 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. Indian Parliament took a lead in the field of Social Welfare Legislation when it introduced Article 21A by the Constitution (Eighty-sixth Amendment) Act, 2002. The object was so laudable and depicted the State' sintention to provide free education to children between the age of six to fourteen years, thus guaranteeing the primary education, particularly to the poor section of the society, whose children were not able to receive education for lack of means and limitations of their family. In order to further clarify, the Government of Maharashtra issued a Resolution vide G.R. No. Uniform-2003/C.N.18/PR-7(26) dated 15th March, 2003 not only to provide education, free of cost, to children but also to supply uniforms, etc., to the deserving poor students. The Government passed its Resolution with an intention that presence of students of Scheduled Castes and Tribes, Nomadic Tribes and De-notified

Tribes in classes of standards 1 to 4 in primary schools under Zilla Parishad of the State should increase and absence should reduce. The Government had formulated a Scheme, particularly keeping in mind the students whose parents were below the poverty line. Usefully, some salient features of this Scheme can be noticed at this stage:-

"1. Out of Rs.1,093.64 lacs funds available for uniform scheme of year 2002-03 contract of providing readymade uniforms to Zilla Parishad in **Pune and Solapur** Districts approximately 10.40% i.e. Rs. 113.77 lacs is entrusted to Jail Superintendent, Jail Department, Maharashtra State, Pune.

2. Out of balance fund of Rs. 89.60 lacs, remaining after deducting amount of stitching contract of providing uniform cloth to remaining 31 Zilla Parishads excluding **Pune and Solapur** Zilla Parishad is entrusted to Maharashtra State Powerloom Corporation.

3. Thirty One (31) Zilla Parishads except **Pune and Solapur** Zilla Parishads should decide stitching agency after inviting competitive bids at Zilla Parishad level.

As per above decision, detailed orders are being given as ahead.

PURCHASE OF CLOTH FOR UNIFORM FROM MAHARASHTRA STATE POWER-LOOM CORPORATION

1. For year 2002-03, cloth of White colour for shirt and blouse, Navy-blue colour for skirt and Ash colour for pants be purchased from Government Undertaking producing cloth i.e. Maharashtra State Power-loom Corporation.

2. Per meter rate of cloth of specification necessary for this department has been fixed vide Industrial Directorate Circular No. BKS/Except Power-loom cloth / rate fixation / (10) / C-14213/ 2002-03 dated 13-11-2002.

SR NO.	SPECIFICATION OF CLOTH NECESSARY FOR VILLAGE DEVELOPMENT DEPARTMENT	RATE (PER MTR.) FIXED BY INDUSTRIAL DIRECTORATE, CENTRAL DEPOT PURCHASE ORGANISATION FROM 01.07.2002 TO 30.06.2003
1	For pant cloth of Ash colour terricot (67% polyester and 33% cotton), width 137 cms., warp 2/32, weft 2/32, reed 56, pick 48.	69

SR NO.	SPECIFICATION OF CLOTH NECESSARY FOR VILLAGE DEVELOPMENT DEPARTMENT	RATE (PER MTR.) FIXED BY INDUSTRIAL DIRECTORATE, CENTRAL DEPOT PURCHASE ORGANISATION FROM 01.07.2002 TO 30.06.2003
2	Cloth of White colour for half shirt and blouse terricot (65% polyester & 35% cotton) width 89 cms., warp 40 T.C., weft 82-D, reed 88, pick 84.	32
3	Terricot cloth of Navy-blue colour for skirt (67% polyester & 33% cotton) width 137 cms., warp 2/32, weft 2/32, reed 56, pick 48.	72

...

4. The Chief Executive Officer, Zilla Parishad should immediately register demand of necessary cloth of above specification and rate with Maharashtra State Power-loom Corporation and give work order. Said corporation will provide entire cloth to Zilla Parishad as per the demand registered by them of White colour cloth for shirt and blouse, Navy-blue colour cloth for skirt and Ash colour cloth for pants at one time. ”

2. Besides the above important clauses, the Scheme had taken care to define the quality, colour and strength of the cloth, out

of which the uniforms were to be made and supplied to these students. Various officers in the hierarchy of the Government as well as in the Zilla Parishad were responsible for due compliance of the Scheme and Resolution that the benefit sought to be provided under the Scheme reaches the deserving.

The present case is a glaring example of how a laudable action of the State can be frustrated by its implementing agencies and persons in positions the ones on whom the responsibility to ensure due performance of the Scheme lay. They opted to disregard all parameters and, in fact, made it sure that the object of the Scheme was defeated, and the beneficiaries of the Scheme remained where they were. Despite due intimation and reports of the Committee, the hierarchy in the State Administration failed to take any action against the defaulting persons; and we may regretfully notice that they even failed to remedy the wrong.

3. The petitioner has filed this Public Interest Litigation, averring that on 15th March, 2003, the State of Maharashtra have issued

the above-mentioned Resolution for providing distribution of uniforms, free of cost, to poor students. For manufacture and supply of the uniforms in different Zilla Parishads, the contract was given to respondent No. 3, Gramin Mahila Griha Udyog, Aurangabad, through its Proprietor. On 21st October, 2003, samples of the uniforms were supplied by respondent No. 3; and they were approved after being rejected twice. According to the petitioner, he noticed that firstly, the uniforms were not supplied, and secondly, wherever supplied, they were of such short sizes and made of inferior quality of cloth that they were practically of no use even to the students who were provided with free uniforms. There were serious complaints in this regard; and, therefore, the Zilla Parishad, Nashik, through the Chief Executive Officer, formed a Committee to fix responsibility and take appropriate action in the matter. The Committee so constituted visited the schools, wherein it became clear that the allegations were correct; and, in fact, respondent No. 3 had defrauded the public money. The Committee made inquiries as well as conducted inspection and submitted a report. Relevant part of the said report reads as under:-

"On 20/2/2004 when the members of the Uniform Enquiry Committee visited the school at Lahamangewadi, Tal. Igatpuri at 4 p.m., one Asstt. Teacher Shri Anil Umaji Panhale told them that the Head Master of the School Shri Rajendra Dinkar Rote and the Asstt. Teacher Shri Gopalkrishna have gone to the meeting at Vadivare for giving documents (in the) afternoon. Attendance-roll of the school is 135. Seventy four students were present and 51 students were absent. But the teachers of the school had marked the attendance of the 21 boys and girls extra. Though there is not a single uniform received by the school, the acknowledgement of the uniform is given as per the direction of somebody.

Not a single boy had been there with a Govt. uniform. The clothes were not distributed to anybody. But the acknowledgment is given. At that time it (the Committee) came to know that the 16 uniforms of the girls at Malekarwadi were received and when the inspection of the uniforms of girls of 4th std. was held, the following measurements were found:-

Blouse = Height 46 cm. Chest 64 cm.

Skirt = Waist 70 cm. Height 45 cm. Bottom 102 cm.

The above measurements found less than the actual measurement (sic). However, after making inspection of the cloth material and the quality of the material, it is found that the material was not as per the sample of the material. It was of inferior quality and as it was worn by Sarala Murlidhar Lahamashe, the student of the IVth std. having birth date 20/9/1994, it was noticed by the Committee that she could not sit properly.

Encl: The sample of the uniform of IVth std. inspected as above and 1 uniform of girl of 1st std. is taken in possession.

It is noticed by the Committee and one teacher Shri D.D. Ahire, Asstt. Teacher at Malekarwadi, Tal. Igatpuri personally told the information that as there are 26 boys and 15 girls having total muster roll of 41 at Malekarwadi, the 18 uniforms (skirts and blouses) of the girls

are received. The uniforms of the boys are still not received.

Hon'ble President Z.P., Nashik	Hon'ble Chairman Agriculture & Animal Husbandry Committee, Z.P., Nashik.	Hon'ble Chairman Women and Children Welfare Committee, Z.P., Nashik

25/2/2004

Sub:- The uniforms received.

School:- Zilla Parishad Primary School, Dhagur Gavtha, Tal. Dindori, Dist. Nashik.

Particulars of Uniforms received

Std. 1St	=	10	+ 6	=	16
2nd	=	0	+ 10	=	10
3rd	=	0	+ 10	=	10
4th	=	0	+ 10	=	10
Total	=	10	+ 36	=	46

The uniforms are received as above stated. It is received through the Tal. Master, Tal. Dindori. Actual School Muster Roll is 70 + 60 + 130 and the received uniforms are only 10 + 36 = 46. The uniforms of the girls are given by Taluka, but the uniforms of the boys are still not received

by Taluka. The uniforms of 1st to 10th std. students are received.

However, the uniforms are not received by Taluka for total 59 boys and 23 girls."

4. The petitioner, even thereafter, made a representation to the authorities; but no action was taken, and none was punished.

5. The Writ Petition was filed in the year 2004, but the respondents, consistent with the attitude of the Zilla Parishad and other authorities, did not even care to file a reply, despite various opportunities. When the matter came up for hearing before the Court on 4th April, 2007, and noticing no change of attitude in the respondents, the Court passed the following order:-

"P.C.

1. The learned Assistant Government Pleader appearing for the second respondent has prayed for further time to seek instructions. We find this request not only unfair but totally unjust as well. This public interest litigation relating to supply of uniforms to poor young children studying in the schools in terms of the notification of the

> State Government is pending in this Court since the year 2004. Despite grant of opportunities, no reply-affidavit was filed. Vide order dated 8th February, 2007, the Court had passed directions and even required the Tahsildars of the concerned Talukas to be in Court. No reply has been filed till date. None is present from the department.
>
> 2. The learned Assistant Government Pleader for the second respondent submits that he had written letters to (i) Tahsildar, Igatpuri, (ii) Tahsildar, Dindori and (iii) Chief Executive Officer, Nashik Zilla Parishad, but no instructions have been given to him.
>
> 3. The respondents cannot take advantage of their own default and delay the process of law before the Court. The request is unreasonable. We decline the same.
>
> 4. We have heard the learned counsel for the parties. Order reserved."

6. The learned Assistant Government Pleader appearing for respondent No. 2 stated that the scheme was in force; and despite order of the Court (Coram: H.L. Gokhale, Ag. C.J., and V.M. Kanade, J.) dated 8th February, 2007, he had not received proper instructions and assistance from the different officers whose names have been noticed above. It is strange that despite different directions of the Court, the Department does not even care to inform the correct facts to the Court. In absence of any reply, and particularly keeping in view the

report of the Committee dated 20th February, 2004, we have no hesitation in accepting the case of the petitioner in its entirety. The doctrine of public accountability must operate with all its rigours in the present case. The public officer / authority, including the Chief Executive Officer of the Zilla Parishad, and various officers in those Departments must be held responsible for such irresponsible acts and omissions. They are answerable to the public at large, and in any case, their actions would be open to judicial review, particularly when they contravene the constitutional mandates. The action of a public authority failing to discharge its duties, in acting with reasonable expeditiousness and failing to check the defaults or wrongs committed by its agency or officer, are all acts clearly inviting the judicial chastizm of such inaction.

7. In the case of *Shri Mahender Kumar vs Land Acquisition Collector*, W.P(C) No.13308-12 of 2005 dated 11th May 2006, the Division Bench of the Delhi High Court observed as under:

"....Wherever a cause is relatable to breach of statutory or implied duty of a public officer, the rule of law would essentially provide for a remedy even if it is not so specifically spelled out in the provisions of an Act. Arbitrariness and unreasonableness being facets of Article 14 (of the Constitution) are available as grounds not only for questioning an administrative action but in certain cases may even invalidate subordinate legislation. Timely action is the essence of Government functioning and unreasonable delay questions the very correctness of such orders. Wherever the records offer no explanation for prolonged unreasonable delay, the equity will tilt more in favour of the petitioners than uphold the action of the authorities to be correct, being done in the normal course of its business... Concept of public accountability has been applied to the decision making process in the government by the courts for a considerable time. This concept takes in its ambit imposition of costs and its recovery from the officer concerned for their negligence or acts of prolonged, unexplained delays running into years. In the case of State of Andhra Pradesh vs. Food Corporation of India 2004 (13) Supreme Court Cases 53, the Court directed as under:-

> 'We are shocked as to the manner in which the State Government is filing petitions in this Court resulting not only in wasting the time of this Court and all others concerned but in total waste of public money.
>
> ... The doctrine of full faith and credit applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is now settled legal position that the bureaucracy

is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is their in-built discipline. But the Head of the Department / designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring the same to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law... It is known fact that in transaction of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels. It is not uncommon that delay would be deliberately caused in filing appeal or revision by Government to confer advantage to the opposite litigant; more so when stakes involved are high or persons are well connected / influential or due to obvious considerations. The Courts, therefore, do not adopt strict standard of proof of every day' s delay. The imposition of costs on officers for filing appeals causes public injustice and gives the manipulators an opportunity to compound the camouflage. Secondly, the imposition of costs personally against the officers would desist to pursue genuine cases of public benefit or importance or of far-reaching effect on public administration or exchequer deflecting course of justice. The principle of care, maintenance of higher caution, expeditious decision-making process in exercise of statutory powers, public

> accountability and transparency are also applicable to the various proceedings under the law of acquisition. Various provisions of the Act could be referred to demonstrate that the exercise of powers emanating from statutory provisions is coupled with public obligation, to protect the rights of the land owners....'

8. Even in the case of Civil Writ Petition No.4382 of 2002, a Division Bench of Punjab and Haryana High Court, by an interim order dated 29th May, 2002, observed as under:-

> "'"The Chief Secretaries of the States of Punjab and Haryana and the Adviser to the Administration, Union Territory, Chandigarh, have stated that they will not only ensure that the directions issued by the Court are implemented but would also take every possible step to reduce the avoidable litigation resulting from actions contrary to law / judgments to the State. They have stated that seminars were held and papers were circulated dealing with the subject-matter of the direction contained in the judgment. The judgments which have attained finality would be particularly given effect to and the persons similarly situated would be given the benefit of the judgments and would not be forced to approach the Court of law for redressal of their grievance as far as possible. They pray for some more time to issue instructions / circulars to all the Government departments as to how the representations filed by the Government employee should be disposed of by passing speaking orders. The competent authority should pass the orders which would clearly state the stand of the Government in relation to the relief claimed by an employee."

9. As is evident from the facts appearing on record, the public money has been wasted, the uniforms have not been supplied to the children, whose parents are below the poverty line. Even if uniforms have been supplied, they are of very inferior quality and abnormal sizes so as to render them unusable for the students for whose benefit, such a welfare scheme was formulated by the State. Inaction on the part of the authorities to remedy the wrong and punish the guilty is, again, a matter of concern. Ignoring such serious irregularities is bound to prove prejudicial even to the administration of the State, besides the fact that it would hurt the interest of the poor strata of society. It was a matter where the State Authorities were expected to rise to the occasion and take certain bold steps to ensure that such kind of misappropriation, misconduct and waste of public money are not permitted in the Zilla Parishads.

10. Having given our serious consideration to the entire facts and circumstances of the present case, we would dispose of this Writ Petition with the following directions:-

(a) The Chief Executive Officer of Zilla Parishad, Nashik, shall ensure that the Uniform Scheme is implemented in its true spirits and substance; and the benefit of distributing free uniforms to the students belonging to a class whose parents are below the poverty line, is actually received in its fullest form;

(b) The Secretary, Department of Rural Development of the State of Maharashtra, shall personally look into this matter; and after conducting an inquiry in accordance with law, take disciplinary, penal and/or such other action as is permissible in law against all the persons responsible for this fraudulent activity;

(c) Further, we direct the Secretary, Department of Rural Development of the State of Maharashtra, to ensure that proper action is taken against -

(i) the Proprietor, Gramin Mahila Griha Udyog, Aurangabad,

(ii) the Tahsildar, Igatpuri, Dist. Nashik,

(iii) the Tahsildar, Dindori, Dist. Nashik, and

(iv) the officer who worked as Chief Executive Officer, Zilla Parishad, Nashik, at the relevant time i.e. 2003-04,

without any further delay and whatever loss has been suffered by the public exchequer / the State shall be directed to be recovered from the erring officers as well as the person to whom the contract was awarded, within a period of three months from the date of pronouncement of this judgment; and

(d) action shall also be taken by the concerned Department against the persons noticed in paragraph 2 of the Order dated 4th April, 2007 for not assisting the learned Assistant Government Pleader, as well as not appearing before the Court, in furtherance to the order of the Court. They are responsible for unnecessary and avoidable adjournments before the Court; besides the fact that they have failed to discharge their public duty.

11. We make it clear that the concerned Secretary of the Government of Maharashtra shall be personally responsible for compliance of this order, and would submit the report of compliance to the Registrar General of this Court who, in turn, shall bring it to the notice of the Court on the administrative side.

12. The Writ Petition is thus disposed of in the above terms, while leaving the parties to bear their own costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.